

United States  
Circuit Court of Appeals

For the Ninth Circuit. 13

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LAWRENCE MONZETTI, PETE GAIDO, BATT  
TAMIETTI, JOHN PAGLEERO, and  
FRANK TAMIETTI,

Cross-Plaintiffs in Error,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Cross-Defendant in Error.

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Transcript of Record.

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Upon Cross Writ of Error to the United States District  
Court of the District of Montana.

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FILED

MAR 9 1928

U.S. DISTRICT COURT



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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LAWRENCE MONZETTI, PETE GAIDO, BATT  
TAMIETTI, JOHN PAGLEERO, and  
FRANK TAMIETTI,

Cross-Plaintiffs in Error,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Cross-Defendant in Error.

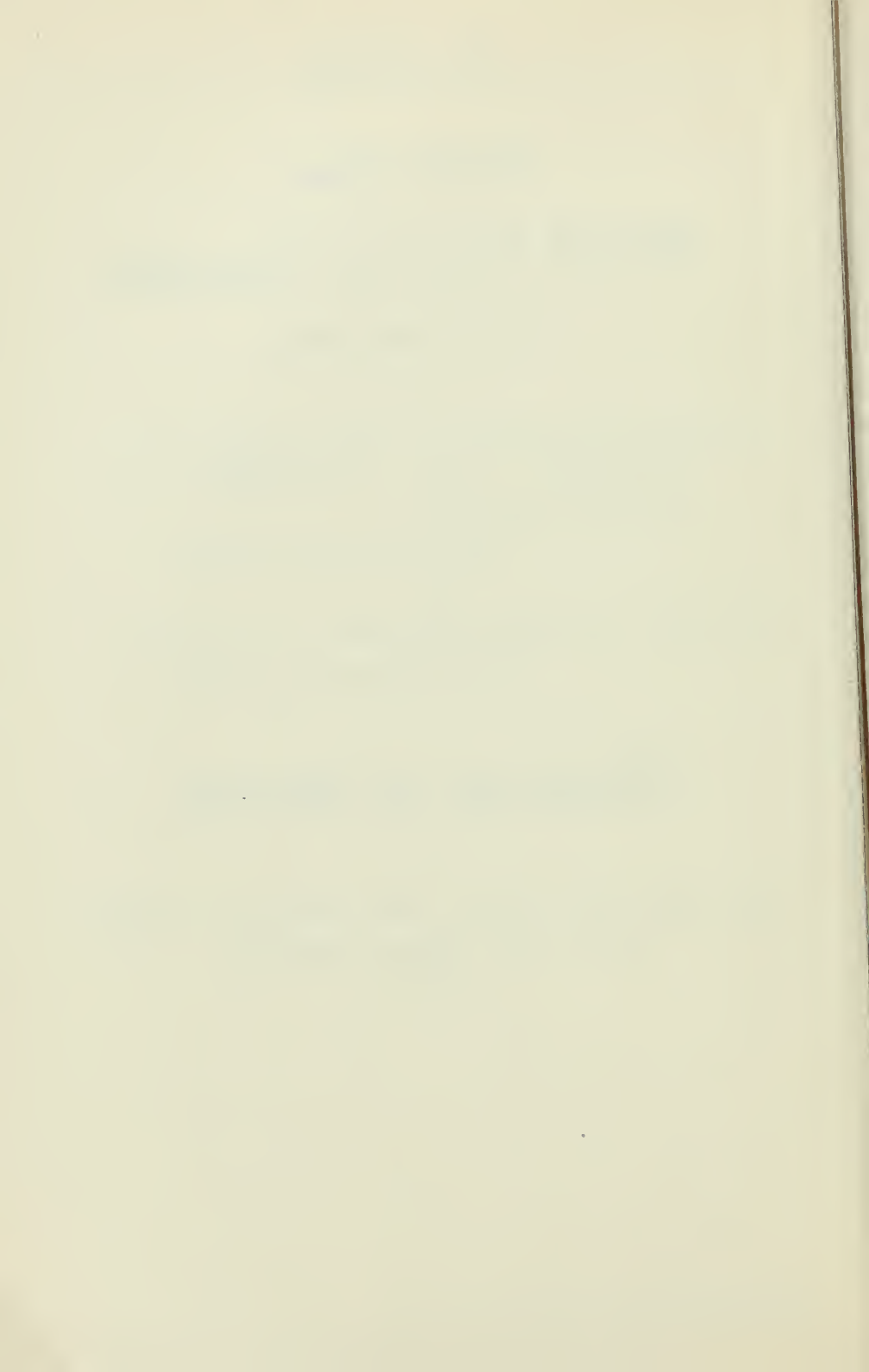
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Transcript of Record.

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Upon Cross Writ of Error to the United States District  
Court of the District of Montana.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

H. A. TYVAND, Butte, Montana,

F. E. McCRACKEN, Butte, Montana,  
Attorneys for Plaintiff in Error.

Messrs. WALKER and WALKER, Butte,  
Montana,

C. S. WAGNER, Butte, Montana,  
Attorneys for Defendant in Error.

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In the District Court of the United States, in and  
for the District of Montana.

LAWRENCE MONZETTI, PETE GAIDO, BATT  
TAMIETTI, JOHN PAGLEERO, and  
FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

BE IT REMEMBERED, that on the 12th day of  
February, 1925, petition for cross writ of error was  
filed herein, which said petition is in the words and  
figures, as follows, to wit: [1\*]

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\*Page-number appearing at foot of page of original certified Trans-  
cript of Record.

In the District Court of the United States, in and  
for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO, BATT  
TAMIETTI, JOHN PAGLEERO, and  
FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

PETITION FOR CROSS WRIT OF ERROR.

To the Honorable CHARLES N. PRAY, Judge of  
said Court:

Now come the plaintiffs Batt Tamietti and Pete Gaido by H. A. Tyvand and F. E. McCracken, Esqs., their attorneys, and feeling themselves aggrieved by the final judgment of this court entered against the said defendant, and in favor of the said Batt Tamietti and Pete Gaido in the sum of Seven Hundred Seventy and 66/100 Dollars (\$770.66) each, on the 6th day of December, 1924, hereby pray that a cross writ of error may be allowed to them from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the District of Montana, and in connection with this petition, petitioners herewith present their assignment of errors.

Wherefore, the said plaintiffs Batt Tamietti and Pete Gaido pray that a cross writ of error from



the judgment of the above-entitled court entered on the 6th day of December, 1924, as aforesaid, may issue in their behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of the errors so complained of; that said judgment be reversed and said action be remanded for a new trial; that this petition for a cross writ of error, Plaintiffs Batt Tamietti and Pete Gaido's assignment of errors, their prayer for reversal, the order allowing a cross writ of error herein, the requested cross writ of error, the citation under the cross writ of error herein and any other papers and records herein necessary to complete the petitioners' transcript to be filed in [2] the said Circuit Court, be added to said defendant's transcript of the records, proceedings and papers upon which judgment herein was rendered and entered, duly authenticated and forwarded to the United States Circuit Court of Appeals of the Ninth Circuit on January 30th, 1925, under a writ of error, for the consideration of the said petitioners' cross writ of error, and may be presented to the United States Circuit Court of Appeals of the Ninth Circuit and that such other and further proceedings may be had as are meet and proper in the premises.

H. A. TYVAND and

F. E. McCRACKEN,

Attorneys for Plaintiffs Batt Tamietti and Pete Gaido.

Filed February 12, 1925. C. R. Garlow, Clerk.

Thereafter, to wit, on the 12th day of February, 1925, assignment of errors was filed herein, which said assignment of errors is in the words and figures as follows, to wit: [3]

In the District Court of the United States in and for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO, BATT  
TAMIETTI, JOHN PAGLEERO, and  
FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

ASSIGNMENT OF ERRORS UNDER CROSS  
WRIT OF ERROR.

Now come plaintiffs, Batt Tamietti and Pete Gaido, by their attorneys, H. A. Tyvand and F. E. McCracken, Esqs., and in this connection with their petition for writ of error say that in the record, proceedings and in the final judgment, aforesaid, manifest error has intervened to the prejudice of said plaintiffs, to wit:

I.

The Court erred in overruling plaintiffs' objection to the testimony given by the witness Lawrence Monzetti and the offer in evidence of Defendant's Exhibits "J," "K," "L," "M," and "N," as follows:

“This is my signature on Defendant’s Exhibit ‘J.’ That is my name on the front, this is my name on the front of Defendant’s Exhibit ‘L.’ That is my name on the back; this is my name on Defendant’s Exhibit ‘K’; that is my signature on Defendant’s Exhibit ‘M,’ and that is my name on the front.

“Mr. WALKER.—If the Court please, we now offer in evidence Defendant’s Exhibits ‘J,’ ‘K,’ ‘L,’ ‘M,’ and ‘N.’

“Mr. McCracken.—Plaintiffs object to the introduction of exhibit ‘J,’ upon the grounds and for the reasons that the same is irrelevant and immaterial and not within the issues of this case, furthermore the same does not prove or tend to prove any of the issues of this case.

“The COURT.—The objection is overruled.

“Exception.

“Mr. McCracken.—Plaintiffs object to the introduction of exhibit ‘K,’ upon the grounds and for the reasons that the same is irrelevant and immaterial and not within the issues of this case, furthermore [4] the same does not prove or tend to prove any of the issues of this case, also it fails to show any consideration for any pretended release as to the 300 shares of stock claimed by Monzetti, as he received nothing more than that which he had coming at that time.

“The COURT.—The objection is overruled.

“Exception.

“Mr. McCracken.—Let the record show that plaintiffs make the same objection to exhibit ‘L’ as plaintiffs made to exhibits ‘J’ and ‘K.’

“The COURT.—Let the record so show and that the objection is overruled.

“Exception.

“Mr. McCRACKEN.—Plaintiffs make the same objection to exhibit ‘M’ as made to exhibits ‘J,’ ‘K,’ and ‘L.’

“The COURT.—Let the record show same objection and that the objection is overruled.

“Exception.

“Mr. McCRACKEN.—Plaintiffs object to the introduction of exhibit ‘N,’ upon the grounds and for the reasons that the same is irrelevant and immaterial and not within the issues of this case, furthermore the same does not prove or tend to prove any of the issues of this case, also it fails to show any consideration for any pretended release by Monzetti as he received nothing more than that which he had coming at that time.

“The COURT.—The objection is overruled.

“Exception.

“(Documents received in evidence, marked Defendant’s Exhibits ‘J,’ ‘K,’ ‘L,’ ‘M,’ and ‘N,’ and are as follows:)

“DEFENDANT’S EXHIBIT ‘J.’

No. 53.

Butte, Montana, March 4, 1922.

Pay to the order of Lawrence Monsanti \$100.00—  
One Hundred and no/100—Dollars.

MATT W. ALDERSON.

To W. A. Clark & Brother,  
93-1 Bankers 93-1,  
Butte, Montana.

(Endorsed across face:) [5]

W. A. Clark & Brothers, Bankers.

Paid

Mar. 6, 1922.

Butte, Montana.

(Endorsements on the back of above exhibit:)

Lawrence Mansanti. Paid.

Filed Dec. 15, 1924. C. R. Garlow, Clerk.”

“DEFENDANT’S EXHIBIT ‘K.’

Butte, Mont., Mar. 4, 1922.

Received of Matt W. Alderson One Hundred Dollars in full for my 200 shares of stock in the Crystal Copper Co. and for any real or implied right which I may have for the purchase of 300 shares additional.

LAWRENCE MOZETTI.

Witness:

\_\_\_\_\_.

Filed Dec. 15, 1924. C. R. Garlow, Clerk.”

## “DEFENDANT’S EXHIBIT ‘L.’

Crystal Copper Co.

No. 7827.

Butte, Montana, March 4, 1922.

Pay to the order of Lawrence Monsanti—\$11.43  
—Eleven & 43/100 Dollars.

CRYSTAL COPPER CO.

(9) By Matt W. Alderson.

To the First National Bank of Butte, Montana.  
93-2.

(Endorsements on the back of above exhibit:)

This check is issued in payment for services of  
for bill rendered to Mar. 4, 1922, for his part of  
Car 58763. If incorrect do not endorse but return  
to have matter made right. Endorsement and  
cashing means its acceptance in full.

LAWRENCE MANSANTI.

Paid: 3-6-22.

Filed Dec. 15, 1924. C. R. Garlow, Clerk.”

## “DEFENDANT’S EXHIBIT ‘M.’

Crystal Copper Co.

No. 7687.

Butte, Montana, Feb. 1, 1922.

Pay to the order of Lawrence Mansanti—\$80.85  
—Eighty & 85/100 Dollars.

CRYSTAL COPPER CO.

(9) By Matt W. Alderson.

To The First National Bank, Butte, Montana 93-2.



(Endorsements on back of above exhibit:)

This check is issued in payment for services or for bill rendered to Jan. 31, 1922, or for his part lot 5-E, B. If incorrect do not endorse [6] but return to have matter made right. Endorsement and cashing means its acceptance in full.

LAWRENCE MANSANTI.

Paid 2-1-22.

Filed Dec. 15, 1924. C. R. Garlow, Clerk.”

“DEFENDANT’S EXHIBIT ‘N.’

Butte, Montana, March 4th, 1922.

Received of the Crystal Copper Company, a corporation, of Butte, Montana, the sum of Eleven & 43/100 Dollars, being my proportionate share in all ores shipped in the name of the Crystal Copper Company, a corporation, by me, as a copartner with others with whom I was interested in a certain lease.

This payment is acknowledged by me as full and complete settlement and satisfaction of any and all claim or claims that I may have against the said Crystal Copper Company, and as full and complete satisfaction of any and all demands that I may have against the Crystal Copper Company, the corporation aforesaid.

LAWRENCE MOSETTI.

Witness:

MATT ALDERSON.

Filed Dec. 15, 1924. C. R. Garlow, Clerk.”

II.

The Court erred in denying plaintiffs’ motion to strike from the evidence certain evidence, to wit:

“Mr. McCracken.—If the Court please, plaintiffs move the Court to strike from the evidence Defendant’s Exhibit ‘J,’ upon the grounds and for the reasons that the same is irrelevant, that no consideration has been shown for the same, as Monzetti received nothing more than that which he had coming at that time, furthermore, the signature was obtained at a time Monzetti was incompetent to act and did not know what he was doing, furthermore, he was unable to read or write, also it does not prove or tend to prove any of the issues in this case as no release was plead in the answer.

“The COURT.—The motion will be denied.

“Exception.”

### III.

The Court erred in denying plaintiffs’ motion to strike from the evidence certain evidence, to wit:  
[7]

“Mr. McCracken.—Plaintiffs make the same motion as to Defendant’s Exhibit ‘K,’ as was made to exhibit ‘J.’

“The COURT.—Let the record show the same motion as to Defendant’s Exhibit ‘K,’ and that the motion is denied.

“Exception.”

### IV.

The Court erred in denying plaintiffs’ motion to strike from the evidence Defendant’s Exhibit ‘L,’ which motion is as follows:

“Mr. McCracken.—Plaintiffs make the same motion as to Defendant’s Exhibit ‘L,’ as was made to exhibits ‘J’ and ‘K.’



“The COURT.—Let the record show the same motion as to Defendant’s Exhibit ‘L,’ and that the motion is denied.

“Exception.”

V.

The Court erred in denying plaintiffs’ motion to strike from the evidence Defendant’s Exhibit ‘M,’ which motion is as follows:

“Mr. McCracken.—Plaintiffs make the same motion as to Defendant’s Exhibit ‘M,’ as was made to exhibits ‘J,’ ‘K,’ ‘L.’

“The COURT.—Let the record show the same motion as to Defendant’s Exhibit ‘M,’ and that the motion is denied.

“Exception.”

VI.

The Court erred in denying plaintiffs’ motion to strike from the evidence Defendant’s Exhibit ‘N,’ which motion is as follows:

“Mr. McCracken.—Plaintiffs make the same motion as to Defendant’s Exhibit ‘N,’ as was made to exhibits ‘J,’ ‘K,’ ‘L,’ ‘M.’

“The COURT.—Let the record show the same motion as to Defendant’s Exhibit ‘N,’ and that the motion is denied.

“Exception.” [8]

VIII.

The Court erred in granting defendant’s motion for a directed verdict at the close of all the evidence in the case as to the second cause of action contained in the amended complaint in this action; which motion is in words and figures, as follows:

The defendant now moves the Court to direct a verdict in favor of the defendant and against the plaintiffs on the grounds and reasons following:

First: There is a fatal variance between the allegation and the proof in this, that plaintiffs rely for a recovery upon the proposition as alleged in their complaint that the plaintiffs were and are a mining copartnership, engaged in mine subleasing and subletting from the defendant Crystal Copper Company, whereas the proof affirmatively shows and discloses that the relationship of mining partners does not and never did exist between these parties in so far as their negotiations and work for the defendant was concerned, but that the proof affirmatively discloses that they were operating and working under a license and not a lease, and that their relationship was nothing more than that of a working agreement for a share of the profits.

There is a fatal variance because the parties Lawrence Monzetti and Batt—the plaintiffs Pete Gaido and Batt Tamietti, if they have any cause of action at all against the defendant it would be as individuals for work, labor and services performed.

Next: That the evidence is insufficient in law to prove a mining copartnership between the plaintiffs in their relations with the defendant in this case. The evidence is insufficient to prove a lease between the plaintiffs and the defendant, and the evidence establishes if it establishes any contractual relationship at all, a contract embodying

a license. The evidence is insufficient to establish a lease for the reason that a lease of *a* the real property of a mining corporation may only be secured by compliance with the provisions of section 6004 of the Revised Codes of Montana, 1921, which requires affirmative approval of the stockholders and the board of directors.

Next: The evidence is insufficient to warrant a recovery by the [9] plaintiffs or any of them, upon the theory that they are a mining copartnership because under the express provisions of section 8059 of the Revised Codes of Montana of 1921, the acts and deeds and things of a majority of the members of such partnership controls all acts of the partnership, and it affirmatively appears in this case that a majority of the members of the so-called partnership have no interest in this litigation, and the same may not be maintained by a minority of the members.

Next: The evidence is wholly insufficient to prove any damages sustained by the plaintiffs or any of them in the event the Court should hold that they were operating under a lease and not a license for the reason that the evidence pertaining to proof of prospective profits or damages by reason of the cancellation of the lease falls short of giving to the jury any tangible basis upon which to base any rational judgment as to damages, but that it would require speculation and conjecture to reach any verdict, and the same would be the result of mere guesswork having no foundation in the evidence in this case, particularly for the reason

that there is no evidence showing or tending to show how long it would have required the plaintiffs to mine the ore in place which they contend they were deprived of mining, nor the cost of mining such ore nor the incidental expenses, or work or labor necessary to prepare the ore for shipment nor is there any evidence in this case showing that the ore if mined could have been smelted for, nor what proportion of the net profits of such ore proportionate of the net profits in dollars would accrue to plaintiffs. There is no evidence before the Court showing what the market price of the metals contained in the ore and from which the plaintiffs would derive net proceeds was or would be.

Further, the contract contended for by the plaintiffs as alleged in their complaint is one void under the statute of fraud of the State of Montana, and the proof in this case discloses that the contract contended for in the complaint is not a lease but a working contract or license.

These matters being directed to the first count.

Upon the second count we urge all of these matters and in addition [10] that plaintiffs may not recover under the second count under any theory of the case for the reason that it affirmatively appears from the evidence in this case that any stock transactions or transactions for the capital stock of the Crystal Copper Company were had with Matt W. Alderson as an individual; and not as a representative of the defendant company, and for the further reason that there is no evidence in



this case to prove any damages which plaintiffs sustained or might have sustained by reason of nondelivery on any stock to them to be earned in the future. That the measure of damages for breach of and agreement to sell personal property not paid for, is fixed by statute, particularly sections 8674 and 8700 of the Revised Codes of Montana of 1921. There is no evidence to show the measure of damages as fixed by these sections of the code, in that the evidence fails to disclose that the value of the property of the stock in question was the market price thereof and the price at which it might have been bought or its equivalent bought in the market nearest to the place where the stock should have been delivered or would have been delivered and put into the possession of the plaintiffs if entitled thereto at all at such time after the breach of duty upon which plaintiffs rights or the rights of any of the plaintiffs to damages accrued or within such time as would suffice with reasonable diligence for them to have been purchased the stock at the nearest or in the open market.

As directed to all of the evidence and to both counts of the complaint, the evidence wholly fails to show any measure of damage in that it fails to disclose the cost of removing the ore the plaintiffs claim they were deprived of mining or the number of men it would have been necessary to employ to remove it or how many of the partners or alleged partners, or the labor of how many of the partners

or alleged partners would be required to remove it or the cost of them mining, would have been.

And for the further reason that the evidence wholly fails to disclose that the partnership as a mining partnership or otherwise, collectively or individually was ready, willing and able to perform its part of the contract alleged or would have performed it as a mining [11] partnership or as individuals had they not been interrupted by the acts of the agent of the company.

The COURT.—The motion of the defendant is granted as to the second count in the complaint, and the jury will be instructed to find for the defendant on the second count.

As to the first count, the motion is denied.

Mr. WALKER.—Note an exception to the ruling of the Court.

Mr. TYVAND.—We ask for an exception.

#### VIII.

The Court erred in receiving the verdict which is, excepting the title of the court and cause, as follows:

#### “VERDICT.

We, the jury in the above-entitled court and action find our verdict in favor of the plaintiffs, Batt Tamietti and Pete Gaido, and against the defendant and assess plaintiffs' damages in the sum of Seven Hundred Seventy & 66/100 (\$770.66) Dollars, each.

(Signed) M. V. CONROY,  
Foreman.”

And in entering judgment in accordance therewith.

H. A. TYVAND and  
F. E. McCRACKEN,  
Attorneys for Plaintiffs, Batt Tamietti and Pete  
Gaido.

Filed February 12, 1925. C. R. Garlow, Clerk.

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Thereafter, on February 12, 1925, prayer for reversal under cross writ of error, was filed herein, which said prayer is in the words and figures as follows, to wit: [12]

In the District Court of the United States in and  
for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

PRAYER FOR REVERSAL UNDER CROSS  
WRIT OF ERROR.

Come now plaintiffs Batt Tamietti and Pete Gaido in the above-entitled action and pray that the judgment rendered and entered in favor of the said plaintiffs, Batt Tamietti and Pete Gaido,

for the sum of Seven Hundred Seventy & 66/100 (\$770.66) Dollars each, on the 6th day of December, 1924, in the above-entitled court, shall be reversed and remanded for a new trial by the United States Circuit Court of Appeals for the Ninth Circuit, and

That such other and further orders as may be fit and proper in the premises may be made in the above-entitled cause by said Circuit Court of Appeals.

H. A. TYVAND and

F. E. McCRACKEN,

Attorneys for Plaintiffs, Batt Tamietti and Pete Gaido.

Filed February 12, 1925. C. R. Garlow, Clerk.

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Thereafter, on February 12, 1925, order allowing cross writ of error was duly signed, filed and entered herein, which said order is in the words and figures as follows, to wit: [13]

In the District Court of the United States for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.



## ORDER ALLOWING CROSS WRIT OF ERROR.

On this 12th day of February, 1925, the plaintiffs, Batt Tamietti and Pete Gaido, by their attorneys, having filed herein, and presented to the Court their petition praying that a writ of error from the judgment of the above-entitled court rendered and entered in the above-entitled action on the 6th day of December, 1924, may issue in their behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors complained of in their petition and specifications of errors filed therewith, and an assignment of errors intended to be urged by them, and praying also that the said plaintiffs' petition for a writ of error, their assignment of errors, their requested writ of error, their prayer for reversal, this order allowing them a writ of error, their citation and any other papers filed herein necessary to complete the petitioners' transcript to be filed in the said Circuit Court of Appeals, be added to defendant's transcript of the records, proceedings and papers upon which judgment herein was rendered and entered, duly authenticated and forwarded to the Circuit Court of Appeals of the Ninth Circuit, January 30th, 1925, under a writ of error issued upon said defendant's petition for a writ of error, for the consideration of the said petitioners' cross writ of error, and may be presented to the United States Circuit Court of Appeals of the Ninth Circuit and that such other and further proceedings

may be had as are meet and proper in the premises.

IN CONSIDERATION WHEREOF, the Court hereby allows plaintiffs, Batt Tamietti and Pete Gaido a writ of error from the said judgment [14] of the District Court in the above-entitled case to the United States Circuit Court of Appeals of the Ninth Circuit upon the filing of a bond in the sum of \$250.00 to be approved by the Court.

IT IS FURTHER ORDERED, that the transcript of record heretofore ordered to be filed in connection with said defendant's writ of error is to be used for the consideration of this cross writ of error, the plaintiffs herein, Batt Tamietti and Pete Gaido being only required to print the papers pertaining to this cross writ of error, to be added to such transcript.

Dated February 12th, 1925.

CHARLES N. PRAY,

Judge of the United States District Court in and  
for the District of Montana.

Filed February 12, 1925. C. R. Garlow, Clerk.

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Thereafter, on February 19, 1925, stipulation waiving bond on cross writ of error was duly filed herein, which stipulation is in the words and figures as follows, to wit: [15]

In the District Court of the United States in and  
for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

STIPULATION WAIVING BOND ON CROSS  
WRIT OF ERROR.

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the bond required in the order allowing plaintiffs Batt Tamietti and Pete Gaido cross writ of error, in the sum of \$250.00, made and entered on the 12th day of February, 1925, be waived by the parties hereto, and that the Court may make and enter a citation under said cross writ of error to the defendant, Crystal Copper Company, without said bond, and the said citation is to have the same force and effect as though said bond had been furnished and approved by said Court.

Dated this 16th day of February, 1925.

H. A. TYVAND and

F. E. McCRACKEN,

Attorneys for Plaintiffs Batt Tamietti and Pete Gaido.

WALKER & WALKER and

C. S. WAGNER,

Attorneys for Defendant Crystal Copper Company, a Corporation.

Filed February 19th, 1925. C. R. Garlow, Clerk.

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Thereafter, on February 20th, 1925, cross writ of error was filed herein, which said cross writ of error and answer of court thereto is hereto annexed. [16]

In the District Court of the United States in and for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO,  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

CROSS WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America to the Honorable CHARLES N. PRAY, one of the Judges of the District Court of the United States for the District of Montana, Sitting at Butte, Montana, GREETING:

BECAUSE, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court of the United States for the District of Montana, at Butte, Montana, before you, at the September term, 1924, thereof, between Lawrence Monzetti, Pete Gaido, Batt Tamietti, John Paglero and Frank Tamietti, plaintiffs, and Crystal Copper Company, a corporation, defendant, manifest error hath happened to the great damage of the said plaintiffs as by the record herein appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within 30 days from the date hereof, together with this writ, that the record and proceedings aforesaid being inspected the said United States Circuit Court of

Appeals for [17] the Ninth Circuit may cause to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States of America, this 20th day of February, 1925.

[Seal] C. R. GARLOW,  
Clerk of the District Court of the United States  
for the District of Montana.

By L. R. Polglase,  
Deputy Clerk.

Service of the above and foregoing writ of error acknowledged and copy thereof received at Butte, Montana, this 20 day of February, 1925.

WALKER & WALKER,  
C. S. WAGNER,  
Attorneys for Plaintiff in Error, Crystal Copper  
Company, a Corporation.

#### ANSWER OF THE COURT TO CROSS WRIT OF ERROR.

The answer of the Honorable, the District Judge of the United States, District of Montana, to the foregoing writ.

The record and proceedings whereof mention is made, with all thing touching the same, I certify, under the seal of said District Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.



By the Court.

[Seal]

C. R. GARLOW,  
Clerk.

By L. R. Polglase,  
Deputy. [18]

[Endorsed]: No. 362. In the District Court of the United States in and for the District of Montana, Lawrence Monzetti, Pete Gaido, Batt Tamietti, John Pagleero and Frank Tamietti, Plaintiffs, vs. Crystal Copper Company, a Corporation, Defendant. Cross Writ of Error. Filed Feb. 20, 1925. C. R. Garlow, Clerk. By L. R. Polglase, Deputy Clerk. [19]

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Thereafter, on February 20th, 1925, citation was filed herein, which citation is hereto annexed, and is in the words and figures as follows, to wit: [20]

In the District Court of the United States in and  
for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

## CITATION UNDER CROSS WRIT OF ERROR.

United States of America,—ss.

The President of the United States to Crystal Copper Company, a Corporation, and to Messrs. Walker & Walker and C. S. Wagner, Its Attorneys, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, within thirty (30) days from the date of this writ, pursuant to a cross writ of error duly allowed by the United States District Court for the District of Montana, on the 12th day of February, 1925, in a cause wherein the Crystal Copper Company, a corporation, the defendant above named is plaintiff in error, and the above-named plaintiffs, Batt Tamietti and Pete Gaido, are defendants in error, to show cause if any why the judgment rendered against the plaintiff in error as in the cross writ of error mentioned should not be reversed and remanded for a new trial, and why speedy justice should not be done to the defendants in error in their behalf.

WITNESS THE Honorable CHARLES N. PRAY, Judge of the District Court of the United



States in and for the District of Montana, this  
[21] 19th day of February, 1925.

CHARLES N. PRAY,  
District Judge.

[Seal]

Attest: C. R. GARLOW,  
Clerk.

By L. R. Polglase,  
Deputy Clerk.

Service of the within citation under cross writ  
of error acknowledged and copy thereof received  
at Butte, Montana, this 20th day of February, 1925.

WALKER & WALKER,  
C. S. WAGNER,

Attorneys for Plaintiff in Error, Crystal Copper  
Company, a Corporation. [22]

[Endorsed]: No. 362. In the District Court of  
the United States for the District of Montana.  
Lawrence Monzetti, Pete Gaido, Batt Tamietti,  
John Pagleero and Frank Tamietti, Plaintiffs,  
vs. Crystal Copper Company, a Corporation, De-  
fendant. Citation Under Cross Writ of Error.  
Filed Feb. 20, 1925. C. R. Garlow, Clerk. By  
L. R. Polglase, Deputy Clerk. [23]

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Thereafter, on February 21st, 1925, praecipe for  
additions to transcript of record was duly filed  
herein, which praecipe is in the words and figures  
as follows, to wit: [24]

In the District Court of the United States in and  
for the District of Montana.

No. 362.

LAWRENCE MONZETTI, PETE GAIDO,  
BATT TAMIETTI, JOHN PAGLEERO  
and FRANK TAMIETTI,

Plaintiffs,

vs.

CRYSTAL COPPER COMPANY, a Corporation,  
Defendant.

PRAECIPE OF DEFENDANTS IN ERROR  
FOR ADDITIONS TO TRANSCRIPT OF  
RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested to make the following additions to the transcript of record, heretofore ordered to be filed in the United States Circuit Court of Appeals for the Ninth Circuit by the plaintiff in error, and to add thereto and file in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to a cross writ of error allowed in the above-entitled cause and to incorporate into such additional transcript of record the following and no other papers or exhibits, to wit:

1. Petition for cross writ of error.
2. Assignment of errors under cross writ of error.
3. Prayer for reversal under cross writ of error.
4. Order allowing cross writ of error.

5. Stipulation of parties to cause waiving bond on the cross writ of error.
6. Cross writ of error.
7. Citation under cross writ of error.
8. A copy of this praecipe.

And that the same be duly certified by you as required by law and the rules of the Court; and that you further state in your certificate under seal, cost of the additions to the record and by whom paid.

H. A. TYVAND and  
F. E. McCRACKEN,

Attorneys for Defendants in Error, Batt Tamietti  
and Pete Gaido. [25]

Service of the foregoing praecipe of defendants in error for additions to transcript of record acknowledged and copy thereof received this 21st day of February, 1925.

WALKER & WALKER and  
C. S. WAGNER,

Attorneys for Plaintiff in Error, Crystal Copper  
Company, a Corporation.

Filed February 21, 1925. C. R. Garlow, Clerk.  
[26]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby

certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 27 pages, numbered consecutively from one to twenty-seven, inclusive, is a true and correct transcript of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel as shown herein, as appears from the original files and records of said court in my custody and control; and I do further certify and return that I have annexed to said transcript, and included within said paging the original citation and cross writ of error.

I further certify that the costs of the transcript of record is the sum of Nine and 50/100 Dollars (\$9.50), and that the same has been paid.

Witness my hand and the seal of said court at Butte, Montana, this 27th day of February, A. D. 1925.

[Seal]

C. R. GARLOW,  
Clerk.

By L. R. Polglase,  
Deputy. [27]

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[Endorsed]: No. 4486. United States Circuit Court of Appeals for the Ninth Circuit. Lawrence Monzetti, Pete Gaido, Batt Tamietti, John Pagleero and Frank Tamietti, Cross-Plaintiffs in Error, vs. Crystal Copper Company, a Corporation, Cross-Defendant in Error. Transcript of Record.

Upon Cross Writ of Error to the United States  
District Court of the District of Montana.

Filed March 3, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

